

(2010) 12 DEL CK 0397
In the Delhi High Court
Case No : Writ Petition (C) 6235 of 2010

BSNL and Others	Vs	APPELLANT
Moda Nand Thakur		RESPONDENT

Date of Decision : 16-12-2010

Acts Referred:

Citation : (2010) 12 DEL CK 0397

Hon'ble Judges : Siddharth Mridul, J; Pradeep Nandrajog, J

Bench : Division Bench

Advocate : Rajnish Prasad, for the Appellant; Amit Kumar, for the Respondent

Final Decision : Disposed Off

Judgement

Pradeep Nandrajog, J.—Appointed as a Junior Engineer in the Post and Telegraph Department under the Government of India, which post was later on re-designated as Junior Telecom Officer (JTO) Petitioner earned regular promotion to the post of Sub-Divisional Engineer (SDE) on 15.7.1991 and with the formation of Bharat Sanchar Nigam Limited (BSNL) Petitioner opted for and became the employee of BSNL.

2. Seniority list of employees of BSNL is admittedly maintained on All India Seniority basis and promotions are effected to the next higher post as per applicable benchmark being achieved and thereupon by way of seniority. However, if short term vacancies such as leave vacancies etc. arise, the senior most person in a division is granted a short term promotion called promotion on Local Officiating basis.

3. On 21.9.2004 an office order was issued promoting Respondent on Local Officiating basis to the next higher post i.e. the post of "STS". It was indicated that the term of Local Officiating Promotion was 180 days and with a break of 1 or 2 days repeat orders granting promotion to the Respondent on Local Officiating basis were issued till 22.6.2006. In between, on 29.5.2006, along with the Respondent 398 other officers were promoted as STS on ad-hoc basis and

undisputably this promotion is with reference to the All India Seniority.

4. Unfortunately, for Respondent No. 1 within 2 months thereafter i.e. on 24.7.2006 a charge sheet was issued alleging some technical defective procedures followed in effecting recommendations for regularization of muster role employees and the charge sheet was followed by an order dated 12.1.2007 reverting Respondent to the post of SDE. It may be noted that by 12.1.2007 no penalty had been levied upon Respondent No. 1.

5. The source of the power claimed by BSNL to revert Respondent No. 1 is an office memorandum containing administrative instructions on procedures to be followed when disciplinary proceedings are initiated against an employee of BSNL. The circular reads as under:

Procedure to be followed when disciplinary proceedings is initiated against a Government servant officiating in a higher post on ad hoc basis: The question whether a Government servant appointed to a higher post on ad hoc basis should be allowed to continue in the ad hoc appointment when a disciplinary proceeding is initiated against him has been considered by this Department and it has been decided that the procedure outlined below shall be followed in such cases.

i) When an appointment has been made purely on ad hoc basis against a short term vacancy or a leave vacancy or if the Government servant appointed to officiate until further orders in any other circumstances has held the appointment for a period less than one year; the government servant shall be reverted to the post held by him substantively or on a regular basis, when a disciplinary proceedings is initiated against him.

ii) Where the appointment was required to be made on ad hoc basis purely for administrative reasons (other than against a short term vacancy or a leave vacancy) and the government servant has held the appointment for more than one year, if any disciplinary proceedings is initiated against the government servant, he need not be reverted to the post held by him only on the ground that disciplinary proceedings has been initiated against him.

Appropriate action in such cases will be taken depending on the outcome of the disciplinary case.

(G.I. D.P.T., O.M. No. 11012/9/86-Estt.(A). dated the 24th December 1986.

6. As per BSNL vide para (i) of the memorandum appointments made purely on ad-hoc basis against a short term vacancy or a leave vacancy or on officiating basis until further orders entitled BSNL to revert an employee upon disciplinary proceedings being initiated within 1 year of such appointment. As per BSNL, the Local Officiating basis promotion had to be ignored and reckoning ad-hoc promotion with effect from 29.5.2006, since Respondent No. 1 was charge sheeted on 24.7.2006, order of reversion dated 12.1.2007 being within 1 year of 29.5.2006 was legal and valid.

7. Claim of Respondent No. 1 before the Tribunal vide impugned order dated 26.3.2010 has been upheld and the order dated 12.1.2007 is quashed with a direction that status quo ante be restored.

8. We may note at this stage that the charge sheet has since resulted in a penalty of censure being imposed upon the Respondent No. 1 and neither party could throw any light as to why till date regular DPC has not been held to consider promotions.

9. Be that as it may, the issue at hand has to be decided with reference to the office memorandum contents whereof have been noted in para 5 above. As noted hereinabove everything turns on the language of para 1 thereof. As per the said paragraph appointments made (i) on ad-hoc basis against a short term vacancy, or (ii) a leave vacancy, or (iii) on officiating basis until further orders resulting in the appointment being for a period less than one year entitles BSNL to revert the employee to the substantive post if disciplinary proceedings are initiated. BSNL desires the memorandum to be read requiring each kind of ad-hoc promotion to be read as disjunctive and the Respondent No. 1 desires the same to be read in conjunction. The reason is obvious. Respondent No. 1 was given Local Officiating basis promotion for the first time when order dated 21.9.2004 was issued limiting the ad-hoc promotion to 180 days and admittedly, with a break of a day or two, ad-hoc promotion on Local Officiating basis was continued till 22.6.2006 and in the meanwhile on 29.5.2006 Respondent No. 1 was promoted on ad-hoc basis. It may be noted that Local Officiating basis promotion effected on 21.9.2004 was not with reference to the All India Seniority of Respondent No. 1 but the ad-hoc promotion effected on 29.5.2006 was with reference to All India Seniority.

10. Now, whether the promotion was on Local Officiating basis or on ad-hoc basis with reference to All India Seniority, a civil right flowed in favour of Respondent No. 1 to receive salary in the higher scale. This right has to be factored in while interpreting the office memorandum. The office memorandum recognizes that if an ad-hoc promotion has continued for one year, the employee should not be reverted merely upon a charge sheet being issued. There is logic in the decision for the reason mere issuance of a charge sheet does not take away the presumption of innocence and the cloud on the integrity of an employee as a result of the charge sheet being issued should not darken his service and thus no adverse impact by way of reversion is the signature tune of the circular. Law requires us to interpret the office memorandum to be in harmony with the signature tune of the office memorandum and not in cacophony. It cannot be lost sight of that effective from 29.1.2004 Respondent No. 1 was working in the higher post and was drawing wages in the said post till the order reverting him was issued on 12.1.2007.

11. The view taken by the Tribunal is a legally reasonable view and it is settled law that as long as the view taken is legally reasonable and the reason for the view is not founded on a wrong principle of law, merely because another

reasonably view is possible to be taken, the writ court would not substitute its own reasoning with that of the Tribunal.

12. However, the Tribunal has lost sight of one fact i.e. of Respondent No. 1 being found guilty at the charge sheet and being visited with the penalty of censure. Thus, to this extent, corrective action has to be taken.

13. We do not know as to what do the service rules or executive instructions pertaining to BSNL employees provide for in case of a penalty being inflicted upon an employee who has yet to earn a permanent promotion.

14. Thus, we dispose of the writ petition modifying the impugned order passed by the Tribunal holding that the order dated 12.1.2007 reverting Respondent No. 1 is illegal and beyond the powers of BSNL and as a result we declare that the Respondent No. 1 would be entitled to status quo ante being restored with all consequential benefits with a rider. BSNL would be competent to pass appropriate order with reference to Respondent No. 1 being censure as a result of the charge sheet being issued to him on 24.7.2006 and if the result of the power exercised by BSNL is the reversion of Respondent No. 1 from the date of his indictment, the consequential benefits enuring to Respondent No. 1 would be limited to said date.

15. No costs.